1907
December 7.

REVISIONAL CRIMINAL.

Before Mr. Justice Sir George Knox.

SHAFAQAT ULLAH *v.* WALI AHMAD KHAN.*

Criminal Procedure Code, section 439—Revision—Practice—Discretion of Court as to entertainment of application in revision.

Held that it is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and has been rejected. *Emperor* v. *Kali Charan* (1) and *Gullay* v. *Bakar Husain* (2) followed.

THE facts of this case are as follows:—

ONE Shafaqat-ullah a zamindar of Sherkot in the Bijnor District made a complaint on the 10th August 1907 in which he made certain charges against Wali Ahmad Khan, Sub-Inspector of Police of that place. This complaint was inquired into at length by the District Magistrate, who dismissed it under section 203 of the Code of Criminal Procedure. The complainant thereupon applied to the High Court under section 437 of the Code asking for further inquiry into the subject matter of his complaint.

Mr. *G. P. Boys*, for the applicant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

KNOX, J.—This is an application under section 437 of the Code of Criminal Procedure asking this Court to set aside an order passed by the District Magistrate of Bijnor under section 203 of the Code and to pass an order for further inquiry. A preliminary objection has been taken to the hearing of this application on the ground that the applicant could have applied to the Sessions Judge and has not done so. In support of the objection my attention has been called to the cases *Emperor* v. *Kali Charan* (1) and *Gullay* v. *Bakar Husain* (2). I agree with what my learned brother has said in *Emperor* v. *Kali Charan*. The only circumstance in this case which might remove it from the category of ordinary circumstances is that an application has been deliberately made to this Court and it would save unnecessary distress to the applicant to hear him now rather than to send

* Criminal Revision No. 613 of 1907.

(1) Weekly Notes, 1904, p. 238. (2) (1905) I. L. R., 28 All., 268.

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him to get the relief he seeks from the Sessions Judge. I do not think that this is sufficient. I can well conceive circumstances which might require that this Court should depart from its ordinary rule, and this is what is said in *Emperor* v. *Kali Charan*. I find no such circumstance in this case and therefore decline to exercise the power conferred by section 437 and reject the application. The applicant is of course at full liberty to apply to the Sessions Judge if he is so advised.

APPELLATE CIVIL.

1907
December 20

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

HAIDAR HUSAIN AND OTHERS (DEFENDANTS) *v.* ABDUL AHAD AND ANOTHER (PLAINTIFFS).*

Civil Procedure Code, section 362—*Parties—Death of sole appellant.—All representatives not brought upon the record—Abatement of appeal.*

The sole appellant, a Muhammadan, died pending the appeal, leaving him surviving a widow, two sons and two daughters. The two sons applied to have themselves brought on to the record as appellants, but did not ask that their mother and sisters should be made parties to the appeal. An application to that effect made by the respondents was not acted upon by the lower appellate Court. *Held* that it was the duty of the sons to have brought upon the record, either as appellants or respondents, the other representatives of their father, and, as they had not done so, the appeal abated. *Ghamandi Lal* v. *Amir Begam* (1) followed.

ONE Muhammad Naki brought a suit in the Court of the Munsif of Rasra against several defendants asking for the demolition of certain constructions which he alleged the defendants to have wrongfully erected and for possession of the land on which they stood. The Munsif dismissed the suit. The plaintiff appealed, but died shortly after the appeal was filed. He left two sons, a widow and two daughters. The sons applied to be brought upon the record of the appeal in place of their father and were so brought, but made no attempt to have the other representatives of the plaintiff made parties to the appeal. The respondents did make an application to that effect; the other representatives were served with notice of this application, but paid no

* Second Appeal No. 506 of 1906, from a decree of Sheo Prasad, Additional Subordinate Judge of Ghazipur, dated the 9th of April 1906, reversing a decree of Manmohan Sanyal, Munsif of Rasra, dated the 31st of August 1905.

(1) (1894) I. L. R., 16 All., 211.